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No. 90-73

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

GENERAL AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v.

BRAD L. SIMMONS,
Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

Petitioner General American Life Insurance Company ("General American") submits this supplemental brief pursuant to Rule 15.7 of the Rules of this Court to address the Court's decision in *Pacific Mutual Life Insurance Co.* v. *Haslip*, No. 89-1279 (Mar. 4, 1991). In *Pacific Mutual*, the Court held that the Due Process Clause of the Fourteenth Amendment may render a punitive damage award "constitutionally unacceptable," slip op., at 15, identified certain relevant criteria for determining whether a punitive damage award "cross[es] the line into the area of constitutional impropriety," *id.*, at 20, and scrutinized a punitive damage award to decide whether it comported with due process. Question 1 of this petition squarely raises these issues, and application of the criteria relied upon by the Court in *Pacific Mutual* demonstrates that the $600,000 punitive damage award imposed against General American in this case is a constitutionally excessive and fundamentally unfair punishment that violates the Due Process Clause.

The Supreme Court of Alabama did not analyze the punitive damage award in this case under the Due Process Clause. Instead, it flatly rejected petitioner's arguments that the federal constitution constrains the award of punitive damages, relying upon its previous decisions in which it "rejected the same arguments . . . and . . . upheld the constitutionality of punitive damages." Pet., App. A, 20a. It also concluded that Alabama's post-verdict procedures for reviewing punitive damage awards, as set forth in *Hammond* v.

City of Gadsden, 493 So. 2d 1374 (Ala. 1986), and *Green Oil Co.* v. *Hornsby*, 539 So. 2d 218 (Ala. 1989), wholly insulate punitive damage awards produced by the Alabama system from constitutional attack. Pet., App. A, 20a.

That position—that punitive damages are *per se* constitutional—was, of course, rejected by this Court in *Pacific Mutual*. "It would be . . . inappropriate to say that . . . [the] imposition [of punitive damages] is never unconstitutional." Slip op., at 14-15. Indeed, even though "Pacific Mutual had the benefit of the full panoply of Alabama's procedural protections," *id.*, at 19, this Court gave independent and "careful consideration" (*id.*, at 20) to the question whether the award in that case was so grossly disproportionate to the severity of the offense and the amount of compensatory damages that it violated the Due Process Clause.

General American is entitled to have the punitive damage award imposed against it subjected to the same kind of "careful" federal constitutional analysis under the standards articulated by this Court in *Pacific Mutual*. Although the award in *Pacific Mutual* was only "4 times the amount of the compensatory damages," and "200 times the out-of-pocket expenses of respondent," slip op., at 20, the Court concluded that the punishment in that case was "close to the line . . . of constitutional impropriety . . . ." *Id.* In this case, the punitive damage award is *59* times the amount of respondent's actual injury under the most

generous reading of the record below[1] and respondent sustained not a single penny of out-of-pocket losses.[2]

Moreover, a punitive "verdict returned by a biased or prejudiced jury no doubt violates due process," *Pacific Mutual*, slip op., at 3 (Kennedy, J., concurring in the judgment); *see also Browning-Ferris Industries of Vermont, Inc.* v. *Kelco Disposal, Inc.*, 109 S. Ct. 2909, 2921 (1989) (assuming that a punitive verdict may not be upheld under the Due Process Clause if "it was the product of bias or passion"), and the "extreme amount of an award compared to the actual damage inflicted can be some evidence of bias or prejudice in an appropriate case." *Pacific Mutual*, slip op., at 3 (Kennedy, J., concurring in the judgment). But the court below did not even address General American's federal due process argument that bias and prejudice infected the jury's deliberations and "that [a] new trial is required," Pet., App. D, 36a-37a, despite the fact that the jury returned a $2,500,000 verdict to punish conduct that inflicted no more than $10,000 in actual injury,[3] and even though

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[1] The jury's general verdict did not differentiate between compensatory and punitive damages. Petitioner has assumed in this Court and in the court below that the entire $600,000 judgment was punitive, and respondent concedes that the compensatory portion of the judgment was, at most, $10,000. Opp., at 4. *See also* Pet., App. A, 25a (Houston, J., concurring) ("the trial court instructed the jury that $10,000 was the total amount of compensatory damages that [respondent] could recover. There was no objection to this.").

[2] Prior to filing this action, respondent received a complete refund, with interest, of his tendered insurance premiums. *See* R. 285, 296.

[3] *See supra* note 1. The jury's $2,500,000 verdict vastly exceeded the punitive damage award in *Washington National In-*

three jurors had concealed during *voir dire* their previous personal involvment in litigation against insurance and financial service companies similar to General American. *See* Pet., App. A, 17a-19a.[4]

The result is a fundamentally unfair punishment that, even after the trial court's remittitur, is "grossly out of proportion to the severity of the offense," *Pacific Mutual*, slip op., at 18-19, and therefore "cross[es] the line . . . of constitutional impropriety." *Id.*, at 20a. Accordingly, the petition should be granted and the case either set for plenary consideration or vacated and remanded to the Supreme Court of Alabama for reconsideration in light of *Pacific Mutual*.

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surance Co. v. *Strickland*, 491 So. 2d 872 (Ala. 1985), a case which was, as Justice Houston observed in his concurring opinion below, "substantially similar" to this case and involved "the same conduct, within a five-year period," and "the same jury instruction." Pet., App. A, 25a (Houston, J., concurring). There is simply no rational explanation for such radically differing punishments. *See id.* ("Were Washington National and its special agent . . . not punished enough? Or was General American and it special agent . . . punished too much? Take the even, or take the odd."); *see also Pacific Mutual*, slip op., at 9 (O'Connor, J., dissenting) (discussing "vastly disparate results" of *Washington National* and this case).

[4] Actual bias in the Alabama civil justice system has, in the past, led this Court to set aside a punitive damage judgment imposed against an insurance company. *See Aetna Life Insurance Co.* v. *Lavoie*, 475 U.S. 813 (1986). However, the trial court "immediately rejected bias" as an explanation for the massive award (Pet., App. C, 32a) without developing any "testimony on which to base [its] ruling that there was no probable prejudice . . . ." Pet., App. A, at 27a (Steagall, J., dissenting in part). The Supreme Court of Alabama held, as a matter of state law, that the trial court "did not abuse its discretion" when it refused to grant a new trial on grounds of bias or prejudice. Pet., App. A, at 19a.

Respectfully submitted,

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